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FEB 22 2010

John A. Clarke, Executive Officer/Clerk
By VICTOR SINO-CRUZ, Deputy

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Attorney for Plaintiff
Pro se

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

KENDRICK MOXON

Plaintiff,

vs.

GRAHAM BERRY,

Defendant.

Case No. BC429217

OPPOSITION TO VEXATIOUS
LITIGANT'S REQUEST TO FILE
NEW LITIGATION;

REQUEST FOR FINDING OF
CONTEMPT AGAINST GRAHAM
BERRY;

NOTICE OF FILING OF
IDENTIFICATION OF VEXATIOUS
LITIGANT PURSUANT TO C.C.P.
§391.7(C) AND AUTOMATIC STAY

Dept: 78
Date: N/A

PART III

INTRODUCTION

In 1999, Graham Berry, was found to have violated Rule 11, F.R.Civ.P., and 28 U.S.C. §1928, through the filing of a frivolous and bad faith action against attorney, plaintiff Kendrick Moxon, and was appropriately monetarily sanctioned. Thereafter, in light of this and other bad faith litigation Mr. Berry pursued and lost, he was found to be a "vexatious litigant" pursuant to C.C.P. §391, et seq. Mr. Berry never paid the

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23 ISADORE CHAIT

24 SUPERIOR COURT OF THE STATE OF CALIFORNIA
25 FOR THE COUNTY OF LOS ANGELES

26 GRAHAM E. BERRY,

Plaintiff,

vs.

ROBERT J. CIPRIANO, et al.,

Defendants.

AND RELATED CASES.

FILED
LOS ANGELES SUPERIOR COURT

AUG 20 1999

JOHN A. CLARKE, CLERK

BY ROBERT E. LEE, DEPUTY

) Case No. BC 184355

) ORDER FINDING GRAHAM E.
) BERRY TO BE A VEXATIOUS
) LITIGANT

) Date: August 20, 1999

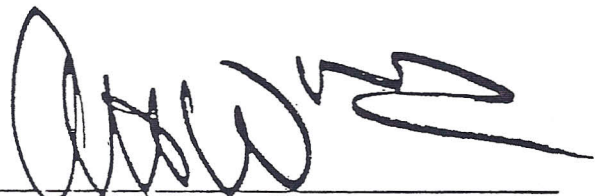
) Time: 8:30 a.m.

) Dept: 35

1 The Court having read and considered the moving papers of Petitioners Church of
2 Scientology International, Isadore Chait and Glenn Barton, opposing papers of Graham E. Berry and
3 supplemental papers filed by the parties and having heard oral argument thereon, the Court hereby
4 finds Graham E. Berry to be a vexatious litigant within the meaning of C.C.P. §§ 391(b)(1)(3)(4).
5 Effective immediately, Graham E. Berry is required to comply with the procedures set forth in
6 C.C.P. §391.7.

7 Further, as the Court has found Mr. Berry to be a vexatious litigant pursuant to *inter alia*
8 C.C.P. §391(b)(4), which section applies to either an attorney appearing in pro per or as a counsel of
9 record, this Court hereby orders that in any action or proceeding in which Mr. Berry appears, either
10 as a party or counsel, he attaches to the first document he files in that action or proceeding a true
11 copy of this Order.

12 Dated: August 20, 1999



Alexander H. Williams, III
Superior Court Judge

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 35

HON. ALEXANDER H. WILLIAMS III

GRAHAM E. BERRY,

PLAINTIFF,

VS.

NO. BC184355

ROBERT CIPRIANO,

DEFENDANT.

REPORTER'S TRANSCRIPT OF PROCEEDINGS
FRIDAY, AUGUST 20, 1999

APPEARANCES:

FOR THE PLAINTIFF:

GRAHAM BERRY *
ATTORNEY AT LAW
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LOS ANGELES, CA 90017
(213) 833-5900

FOR THE DEFENDANT:

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SIMKE CHODOS
BY: DAVID M. CHODOS
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BY TELEPHONE

MR. BARRY SOTER
ATTORNEY AT LAW

CHARLES KUHN, CSR #7810
OFFICIAL REPORTER

1 CASE NUMBER: BC184355
2 CASE NAME: GRAHAM E. BERRY VERSUS
3 ROBERT J. CIPRIANO
4 LOS ANGELES, CA FRIDAY, AUGUST 20, 1999
5 DEPARTMENT 35 HON. ALEXANDER WILLIAMS, III, JUDGE
6 REPORTER: CHARLES KUHN, CSR #7810
7 APPEARANCES: (AS NOTED ON TITLE PAGE.)

8 THE COURT: GOOD MORNING AND WELCOME
9 BACK. WE ARE ON THE RECORD IN CASE NUMBER BC184355 AND
10 RELATED CONSOLIDATED MATTERS. THE LEAD NAME IS GRAHAM
11 BERRY VERSUS ROBERT CIPRIANO.

12 COUNSEL, GOOD MORNING. THANK YOU FOR
13 YOUR PATIENCE THIS MORNING. MAY I HAVE YOUR
14 APPEARANCES. AND I REMIND YOU THAT ONE COUNSEL IS
15 APPEARING BY PHONE, THAT APPEARANCE, MR. SOTER?

16 MR. SOTER: BARRY SOTER OF WASSERMAN, SOTER AND
17 COUNSEL, FORMALLY ATTORNEY OF RECORD FOR THE DISMISSED
18 DEFENDANT, ROBERT CIPRIANO.

19 THE COURT: I KNOW YOU ARE OUT OF TOWN, AND I DO
20 WANT TO REPEAT MY REQUEST OF YOU. IF AT ANY TIME YOU
21 DON'T HEAR, SOUND OFF IN SOME WAY AND I WILL ASSURE
22 THAT THESE PROCEEDINGS ARE CONDUCTED IN A WAY THAT
23 EVERYBODY CAN UNDERSTAND, OKAY, SIR?

24 MR. SOTER: I WILL DO THAT.

25 THE COURT: OTHER APPEARANCES OF COUNSEL HERE IN
26 COURT.

27 MR. CHALEFF: GERALD CHALEFF OF ORRICK,
28 HERRINGTON AND SUTCLIFF FOR CHURCH OF SCIENTOLOGY

1 YOUR PASSION AND YOUR CONCERN WOULD RECEIVE LAWFUL
2 HEARING AND LAWFUL ACCESS.

3 IT IS THE DIFFICULT CASES THAT MAKE A
4 JUDGE A JUDGE, AND I HAVE TRIED VERY HARD TO RESPOND
5 WITH THE BEST JUDICIAL FIBER I CAN MUSTER TO THIS VERY
6 CHALLENGING CASE.

7 I REPEAT NOW WHAT I HAD SUGGESTED IN MY
8 DIALOGUE WITH YOU IN YOUR ARGUMENT. I THINK THE
9 PETITION IS MORE ABOUT NOT SO MUCH ABOUT WHAT YOU HAVE
10 DONE IN SEEKING TO REDRESS FOR THE CLAIMS YOU HAVE
11 BROUGHT TO THIS COURT THAN IT IS ABOUT HOW YOU HAVE
12 DONE IT.

13 THIRDLY, THERE IS AN IRONY HERE. MY
14 POSITION AS A NEUTRAL JUDICIAL ARMS-LENGTH OBSERVER OF
15 THE PASSIONS AND ACCUSATIONS AND RECRIMINATIONS THAT
16 ARE ASSOCIATED WITH LITIGATION BY AND AGAINST THE
17 CHURCH OF SCIENTOLOGY AND ITS PRESENT AND FORMER
18 DECIPLES HAS CAUSED ME TO SEE A LOT OF CONSPIRACY
19 THEORIES AND SUGGESTIONS AND SUSPICIONS AND FINGER
20 POINTING. AND THAT LEADS TO A GREAT AND SAD IRONY.

21 IF ONE LOOKS FOR ONE PERSON WHO IS
22 RESPONSIBLE FOR THE FAILURE OF THE MATTERS AND CLAIMS
23 YOU HAVE BROUGHT TO THIS COURT, IF ONE LOOKS FOR ONE
24 PERSON RESPONSIBLE FOR THE CHURCH OF SCIENTOLOGY AND
25 ITS ALLIES PREVAILING AS YOU MIGHT PRESUMPTIVELY
26 PRESUME THEM TO HAVE PREVAILED IN THIS CASE, THE ONE
27 PERSON MOST RESPONSIBLE IS GRAHAM BERRY. THAT IS WHAT
28 THE MOTION IS ABOUT. THAT IS WHAT THE PETITION IS

1 ABOUT.

2 THE WAY THINGS HAVE HAPPENED IN THIS
3 LITIGATION AND THE WAY IT HAS BEEN CONDUCTED HAVE GIVEN
4 SUPPORT TO THE PETITION. WITH ALL THE DUE RESPECT,
5 SIR, I HAVE TO SADLY STATE THAT IF THERE IS SUCH A
6 THING ON GOD'S GREEN EARTH AS A VEXATIOUS LITIGENT YOU,
7 SIR, SADLY, ARE IT.

8 GEORGES SANTIATA G-E-O-R-G-E-S SAID,
9 THOSE WHO DO NOT LEARN FROM HISTORY ARE CONDEMNED TO
10 RELIVE IT. THEREFORE, IT IS WITH GREAT REGRET THAT I
11 FIND MYSELF JUDICIALLY OBLIGED TO GRANT THE PETITION.

12 I DO NOT DO SO LIGHTLY. ACCESS TO
13 JUSTICE IS THE CENTRAL FIBER OF MY JUDICIAL OBLIGATION
14 AND THE HIGHEST PRIDE OF MY DAILY DUTY.

15 I AM IN THE BUSINESS OF AFFORDING
16 OPPORTUNITIES TO PEOPLE TO BE HEARD. NOT JUST ON
17 PLEASANT MATTER BUT ON UNPLEASANT. NOT JUST ON EASY
18 MATTERS, BUT ON DIFFICULT. TO HOLD THE DOORS OF THIS
19 COURTROOM OPEN TO ALL WHO SEEK TO DRAW NEAR, AND BE
20 HEARD, IN THE WORDS, THE OPENING WORDS OF THE UNITED
21 STATES SUPREME COURT AND COURTS THROUGHOUT THIS LAND, I
22 HOLD THAT INVITATION PROUDLY TO DRAW YOU IN AND YOU
23 SHALL BE HEARD.

24 I TAKE COMFORT IN GRANTING THIS PETITION.
25 I'M NOT PREVENTING ACCESS TO JUSTICE FOR YOU OR THOSE
26 YOU REPRESENT, BUT ONLY REQUIRING THAT THAT ACCESS BE
27 PROCURED UNDER CIRCUMSTANCES THAT ASSURE THAT THE
28 PROCEEDINGS IN THAT COURT WILL BE MORE ORDERLY, MORE

1 SHOULD BE OBLIGED TO ANSWER A FORM INTERROGATORY NUMBER
2 THREE OR SOMETHING LIKE THAT, SOMEBODY CAN TAKE THE
3 ADVANTAGE OF DUMPING INTO THE COURT FILE ALL MANNER OF
4 HEINOUS MATERIAL AND SAY, WELL, NOW IT'S A, NOT UNDER
5 SEAL; AND B, IT'S THERE FOR ME TO REPUBLISH AND CLAIM A
6 PRIVILEGE.

7 THE COURT: I GUESS I'VE BEEN THE PUBLIC EYE SO
8 LONG, INCLUDING GOING THROUGH JUDICIAL ELECTION THAT I
9 HAVE LEARNED AT SOME POINT THAT THE PUBLIC DOESN'T
10 BEGIN TO CARE HALF AS MUCH AS WE DO ABOUT WHAT IS SAID
11 ABOUT US, AND THAT AT SOME POINT YOU JUST HAVE TO
12 RECOGNIZE THAT PEOPLE SAY STUFF AND THAT IN AN OPEN
13 SOCIETY SOONER OR LATER THE TRUTH WILL OUT AND THAT
14 THOSE WHO SAY THINGS ABOUT PEOPLE SOONER OR LATER
15 BECOME SELF IMPEACHING.

16 INDEED, I KNOW PEOPLE THAT ARE OFFENDED
17 IF THEY ARE NOT INCLUDED IN THE LIST OF CERTAIN
18 ACCUSATIONS THAT COME FROM CERTAIN SOURCES, THEIR
19 PRINCIPLE RESPONSE IS THAT YOU TELL A FRIEND. I URGE A
20 GROWN UP APPROACH OF THIS.

21 I FULLY APPRECIATE THE SLINGS AND
22 ARROWS OF OUTRAGEOUS OVER STATEMENT TO PUT IT IN YOUR
23 PERSPECTIVE AND I AM NO FAN OF THE WAY LITIGATION
24 PRIVILEGE IS IMPLEMENTED IN CALIFORNIA BECAUSE IT
25 ENCOURAGES EXACTLY WHAT HAS HAPPENED BEFORE THIS COURT.

26 MY REACTION TO IT IS NUMBER ONE THIS IS
27 EXHIBIT LETTER A, AND IF THE RULE STINKS, HERE IS A
28 GOOD REASON WHY IT DOES BECAUSE QUITE FRANKLY THIS

1 COURT HAS SEEN THE DUMPING OF HUGE AMOUNTS OF
2 BORDERLINE IRRELEVANT MATERIAL WITH UNDUE GLEE BY MR.
3 BERRY BECAUSE IT IS IN HIS JUDGMENT AND MY OBSERVATION.
4 A LICENSE TO BASH AND TRASH. I HAVE SEEN IT. I HAVE
5 WATCHED IT AND IT'S TIME FOR SOMEBODY TO CALL IT WHAT
6 IT IS AND THAT IS WHAT IT IS.

7 IT IS BORDERLINE CHILDISH BUT BY THAT
8 STANDARD AN AWFUL LOT OF STUFF I SEE IN THIS COURT
9 WOULD GO DOWN THE TUBES.

10 THE NEXT POINT I MAKE IS I DON'T SEE MY
11 HAVING AUTHORITY TO SCREEN IT. IT IS MY DUTY TO FOLLOW
12 THE LAW WITH CARE AND WITH BALANCE, AND I WON'T PUT
13 THINGS UNDER SEAL, I JUST DON'T BELIEVE IT.

14 MR. ROSEN: I DIDN'T ASK YOU TO, I ASKED YOU TO
15 EXERCISE YOUR AUTHORITY TO STRIKE.

16 THE COURT: AND THAT IS SOMETHING THAT I DON'T
17 KNOW ABOUT AND WHAT I WILL TELL YOU IS, I WILL, AS I
18 SAID TO MR. BERRY ON SO MANY THINGS, I AM OPEN TO TELL
19 YOU WHAT YOU WANT TO DO AND WHY. I DON'T HAVE IT
20 BEFORE ME AND THEREFORE MY PROPOSAL IS THAT WE ARE
21 GOING TO SET IT DOWN ON A DATE AND YOU ALL COME AND
22 ANYBODY WHO WANTS TO, WHAT DID WE SAY EARLIER, THOSE OF
23 YOU WHO WISH TO BE HEARD DRAW NEIGH AND YOU SHALL BE
24 HEARD.

25 EVEN IF IT'S FROM NEW YORK CITY, WE ARE
26 AN EQUAL OPPORTUNITY COURTROOM. REMEMBER THAT I WAS
27 TEN YEARS OLD BEFORE I KNEW THAT YANKEES WAS A BASEBALL
28 TEAM TOO.

1 YOU ARE TRAINED AND EQUIPPED AND OBVIOUSLY QUITE
2 CAPABLE OF DOING, AND THOSE THAT ARE AGAINST YOU I
3 EXPECT THEM TO DO THE SAME.

4 MR. BERRY: FINALLY, YOUR HONOR, IS
5 MR. CIPRIANO A PARTY BEFORE THIS COURT OR IS HE NOT?

6 THE COURT: HE IS NOT. AS OF MY POSITION
7 TODAY, HE IS A, AND I WANT TO SAY ON THE RECORD HE IS A
8 DEFENDANT AS TO MATTERS THAT HAVE BEEN DISMISSED.

9 I WELCOME HIM TO THIS COURT AS I WELCOME
10 EVERYBODY HERE AND I OFFER HIM, I HOPE COURTESY AND
11 RESPECT AS I DO EVERYONE ELSE. BUT I DON'T THINK THAT
12 HE HAS A LEGAL STANDING BEFORE THIS COURT UNLESS I'M
13 MISSING SOMETHING. YOU KNOW YOU HAVE A LAWSUIT AND
14 PEOPLE GET SUED AND PEOPLE GET DISMISSED AND THEY ARE
15 ENTITLED TO CLOSURE. AND THANK INCLUDES ALL OF US.

16 ALL RIGHT, ANYTHING ELSE OR ANY COMMENTS?
17 THANK YOU ALL VERY MUCH. I KNOW YOU HAVE SPENT MORE OF
18 YOUR DAY THAN YOU PLANNED TO I GUESS YOU ARE ON NOTICE
19 FOR THAT.

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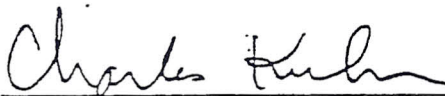
1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 2 FOR THE COUNTY OF LOS ANGELES
 3 DEPARTMENT 35 HON. ALEXANDER WILLIAMS III

4
 5 GRAHAM E. BERRY,)
 6 PLAINTIFF,)
 7 VS.) NO. BC184355
 8 ROBERT J. CIPRIANO,)
 9 DEFENDANT(S).)

10 STATE OF CALIFORNIA)
 11) SS.
 12 COUNTY OF LOS ANGELES)

13 I, CHARLES KUHN, CSR NO. 7810 OFFICIAL
 14 SHORTHAND REPORTER OF THE STATE OF CALIFORNIA, FOR THE
 15 COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE
 16 FOREGOING PAGES 1 THROUGH 105, INCLUSIVE, COMPRISE
 17 A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE TESTIMONY
 18 AND PROCEEDINGS TAKEN IN THE ABOVE-ENTITLED MATTER ON
 19 FRIDAY, AUGUST 20, 1999.

20
 21 DATED THIS 24 DAY OF {MONTH}, 1998.

22 
 23 CHARLES KUHN, OFFICIAL REPORTER

24
 25 C.S.R. NO. 7810
 26
 27
 28

State Bar Court of the State Bar of California
Hearing Department ☒ Los Angeles ☐ San Francisco

Counsel for the State Bar Terrie Coldade, No. 155348 Agustin Hernandez, No. 161625 1149 S. Hill St. Los Angeles, CA 90015 (213) 765-1000	Case number(s) 99-0-12791-EEB	(for Court's use) PUBLIC MATTER FILED  OCT 29 2001 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel for Respondent Graham E. Berry, No. 128503 3384 McLaughlin Ave. Los Angeles, CA 90066 (310) 745-3771	Submitted to ☐ assigned judge ☒ settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION ☐ PREVIOUS STIPULATION REJECTED	
In the Matter of Graham Edward Berry Bar # 128503 A Member of the State Bar of California (Respondent)		

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted June 17, 1987
(date)
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation, are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consist of 15 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☐ until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
- ☒ costs to be paid in equal amounts prior to February 1 for the following membership years:
2002 & 2003 & 2004 & 2005
 (hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
- ☐ costs waived in part as set forth under "Partial Waiver of Costs"
- ☐ costs entirely waived

Note: All information required by this form and any additional information which cannot be provided in the space provided, shall be set forth in the text component of this stipulation under specific headings, i.e. "Facts," "Dismissals," "Conclusions of Law."

(Stipulation form approved by SBC Executive Committee 10/16/00)

Actual Suspension

In the Matter of

A Member of the State Bar

Graham Edward Berry

Case Number(s):

99-0-12791-EEB

NOLO CONTENDERE PLEA TO STIPULATION AS TO FACTS, CONCLUSIONS OF LAW AND DISPOSITION

Bus. & Prof. Code §6085.5 Disciplinary Charges: Pleas to Allegations

There are three kinds of pleas to the allegations of a notice of disciplinary charges or other pleading which initiates a disciplinary proceeding against a member:

(a) Admission of culpability.

(b) Denial of culpability.

(c) Nolo contendere, subject to the approval of the State Bar Court. The court shall ascertain whether the member completely understands that a plea of nolo contendere shall be considered the same as an admission of culpability and that, upon a plea of nolo contendere, the court shall find the member culpable. The legal effect of such a plea shall be the same as that of an admission of culpability for all purposes, except that the plea and any admissions required by the court during any inquiry it makes as to the voluntariness of, or the factual basis for, the pleas, may not be used against the member as an admission in any civil suit based upon or growing out of the act upon which the disciplinary proceeding is based. (Added by Stats. 1996, ch. 1104.) (emphasis supplied)

RULE 133, Rules of Procedure of the State Bar of California STIPULATIONS AS TO FACTS, CONCLUSIONS OF LAW AND DISPOSITION

(a) A proposed stipulation as to facts, conclusions of law, and disposition shall set forth each of the following: ...

(5) a statement that respondent either

(i) admits the facts set forth in the stipulation are true and that he or she is culpable of violations of the specified statutes and/or Rules of Professional Conduct or

(ii) pleads nolo contendere to those facts and violations. If the respondent pleads nolo contendere, the stipulation shall include each of the following:

(a) an acknowledgment that the respondent completely understands that the plea of nolo contendere shall be considered the same as an admission of the stipulated facts and of his or her culpability of the statutes and/or Rules of Professional Conduct specified in the stipulation; and

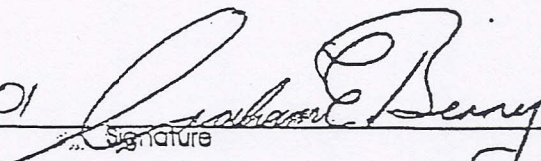
(b) If requested by the Court, a statement by the deputy trial counsel that the factual stipulations are supported by evidence obtained in the State Bar Investigation of the matter. (emphasis supplied)

I, the Respondent in this matter, have read the applicable provisions of Bus. & Prof. Code §6085.5 and rule 133(a)(5) of the Rules of Procedure of the State Bar of California. I plead nolo contendere to the charges set forth in this stipulation and I completely understand that my plea shall be considered the same as an admission of culpability except as stated in Business and Professions Code section 6085.5(c).

Date

10.25.01

Signature



print name

GRAHAM E. BERRY

(Nolo Contendere Plea form approved by SBC Executive Committee 10/22/97)

- B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b).] Facts supporting aggravating circumstances are required.

(1) ☐ Prior record of discipline [see standard 1.2(f)]

(a) ☐ State Bar Court case # of prior case _____

(b) ☐ date prior discipline effective _____

(c) ☐ Rules of Professional Conduct/ State Bar Act violations: _____

(d) ☐ degree of prior discipline _____

(e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or under "Prior Discipline".

- (2) ☐ Dishonesty: Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ Trust Violation: Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☐ Harm: Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) ☐ Indifference: Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ Lack of Cooperation: Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☒ Multiple/Pattern of Misconduct: Respondent's current misconduct evidences multiple acts of wrongdoing ~~_____~~
- (8) ☐ No aggravating circumstances are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see Standard 1.2(e).] Facts supporting mitigating circumstances are required.

- (1) ☒ No Prior Discipline: Respondent has no prior record of discipline over many years of practice ~~coupled with proven misconduct which is not deemed serious.~~
- (2) ☐ No Harm: Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☒ Candor/Cooperation: Respondent displayed spontaneous candor and cooperation ~~to the victim as~~ ~~in the misconduct and~~ to the State Bar during disciplinary investigation ~~and proceedings.~~
- (4) ☒ Remorse: Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct ~~relation to Court One.~~
- (5) ☐ Restitution: Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ Delay: These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☒ Good Faith: Respondent acted in good faith.
- (8) ☒ Emotional/Physical Difficulties: At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties ~~or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.~~
- (9) ☒ Severe Financial Stress: At the time of the misconduct, Respondent suffered from severe financial stress ~~which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.~~
- (10) ☐ Family Problems: At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ Good Character: Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ Rehabilitation: Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ No mitigating circumstances are involved.

Additional mitigating circumstances: See Stipulation Attachment.

D. Discipline

1. Stayed Suspension.

- A. Respondent shall be suspended from the practice of law for a period of 18 months
- ☐ i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
 - ☐ ii. and until Respondent pays restitution to _____ [payee(s)] (or the Client Security Fund, if appropriate), in the amount of _____, plus 10% per annum accruing from _____ and provides proof thereof to the Probation Unit, Office of the Chief Trial Counsel
 - ☐ iii. and until Respondent does the following: _____
- B. The above-referenced suspension shall be stayed.

2. Probation.

Respondent shall be placed on probation for a period of 18 months, which shall commence upon the effective date of the Supreme Court order herein. (See rule 953, California Rules of Court.)

3. Actual Suspension.

- A. Respondent shall be actually suspended from the practice of law in the State of California for a period of 9 months
- ☐ i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
 - ☐ ii. and until Respondent pays restitution to _____ [payee(s)] (or the Client Security Fund, if appropriate), in the amount of _____, plus 10% per annum accruing from _____ and provides proof thereof to the Probation Unit, Office of the Chief Trial Counsel
 - ☐ iii. and until Respondent does the following: _____

E. Additional Conditions of Probation:

- (1) ☐ If Respondent is actually suspended for two years or more, he/she shall remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) ☒ During the probation period, Respondent shall comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) ☒ Within ten (10) days of any change, Respondent shall report to the Membership Records Office of the State Bar and to the Probation Unit, all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) ☒ Respondent shall submit written quarterly reports to the Probation Unit on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent shall state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all

conditions of probation during the preceding calendar quarter. If the first report would cover less than 30 days, that report shall be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (5) ☐ Respondent shall be assigned a probation monitor. Respondent shall promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, respondent shall furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Probation Unit. Respondent shall cooperate fully with the probation monitor.
- (6) ☒ Subject to assertion of applicable privileges, Respondent shall answer fully, promptly and truthfully any inquiries of the Probation Unit of the Office of the Chief Trial Counsel and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (7) ☒ Within one (1) year of the effective date of the discipline herein, respondent shall provide to the Probation Unit satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended.
- (8) ☐ Respondent shall comply with all conditions of probation imposed in the underlying criminal matter and shall so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Probation Unit.
- (9) ☒ The following conditions are attached hereto and incorporated:
- | | |
|--|---|
| ☐ Substance Abuse Conditions | ☐ Law Office Management Conditions |
| ☒ Medical Conditions | ☒ Financial Conditions |
- (10) ☒ Other conditions negotiated by the parties:
- ☒ Multistate Professional Responsibility Examination: Respondent shall provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Probation Unit of the Office of the Chief Trial Counsel during the period of actual suspension or within one year, whichever period is longer. Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 951(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.
- ☐ No MPRE recommended.
- ☒ Rule 955, California Rules of Court: Respondent shall comply with the provisions of subdivisions (a) and (c) of rule 955, California Rules of Court, within 30 and 40 days, respectively, from the effective date of the Supreme Court order herein.
- ☐ Conditional Rule 955, California Rules of Court: If Respondent remains actually suspended for 90 days or more, he/she shall comply with the provisions of subdivisions (a) and (c) of rule 955, California Rules of Court, within 120 and 130 days, respectively, from the effective date of the Supreme Court order herein.
- ☐ Credit for Interim Suspension [conviction referral cases only]: Respondent shall be credited for the period of his/her interim suspension toward the stipulated period of actual suspension.

In the Matter of Graham Edward Berry
A Member of the State Bar

Case Number(s):

99-0-12791-EEB

Medical Conditions

- a. ☒ Respondent shall obtain psychiatric or psychological help/ treatment from a duly licensed psychiatrist, psychologist, or clinical social worker at respondent's own expense a minimum of 1 time ^{every other} ~~per~~ month and shall furnish evidence to the Probation Unit that respondent is so complying with each quarterly report. Help/treatment should commence immediately, and in any event, no later than thirty (30) days after the effective date of the discipline in this matter. Treatment shall continue for 18 months or 18 years or the period of probation or until a motion to modify this condition is granted and that ruling becomes final.

If the treating psychiatrist, psychologist, or clinical social worker determines that there has been a substantial change in respondent's condition, respondent or Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 550 of the Rules of Procedure of the State Bar. The motion must be supported by a written statement from the psychiatrist, psychologist, or clinical social worker, by affidavit or under penalty of perjury, in support of the proposed modification.

- b. ☒ Upon the request of the Probation Unit, respondent shall provide the Probation Unit with medical waivers and access to all of respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Probation Unit shall be confidential and no information concerning them or their contents shall be given anyone except members of the Office of the Chief Trial Counsel, including the Probation Unit, and the State Bar Court, who are directly involved with maintaining, enforcing or adjudicating this condition.

(State Bar Court Case No. 99-O-12791)

S103735

SUPREME COURT
FILED

IN THE SUPREME COURT OF CALIFORNIA

APR 11 2002

EN BANC

Frederick K. Orlisch Clerk

DEPUTY

IN RE GRAHAM EDWARD BERRY ON DISCIPLINE

It is ordered that GRAHAM EDWARD BERRY, State Bar No. 128503, be suspended from the practice of law for 18 months, that execution of the suspension be stayed, and that he be placed on probation for 18 months subject to the conditions of probation, including 9 months actual suspension and restitution, recommended by the Hearing Department of the State Bar Court in its order approving stipulation filed on October 29, 2001, as modified by its order filed November 26, 2001. It is also ordered that he take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) It is further ordered that he comply with rule 955 of the California Rules of Court, and that he perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of this order.* Costs are awarded to the State Bar pursuant to Business & Professions Code section 6086.10 and payable in equal installments for membership years 2003, 2004 and 2005.

*(See Bus. and Prof. Code, § 6126, subd. (c).)



Acting Chief Justice

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: GRAHAM EDWARD BERRY

CASE NUMBER(S): 99-O-12791-EEB

PARTIES ARE BOUND BY THE STIPULATED FACTS.

The parties intend to be and are hereby bound by the stipulated facts contained in this stipulation. This stipulation as to facts and the facts so stipulated shall independently survive even if the conclusions of law and/or stipulated disposition set forth herein are rejected or changed in any manner whatsoever by the Hearing Department or the Review Department of the State Bar Court, or by the California Supreme Court.

FACTS AND CONCLUSIONS OF LAW.

RESPONDENT WAIVES ALL VARIANCES BETWEEN THE FACTS AND CHARGES SET FORTH IN THIS STIPULATION AND THOSE SET FORTH IN THE NOTICE OF DISCIPLINARY CHARGES FILED WITH THE STATE BAR COURT.

COUNT ONE

1. On or about April 30, 1999, Glenn Barton's counsel caused a levy to be placed upon Respondent's Bank of America business checking account, no. 21464-10460 (the "business account") in an attempt to collect upon a \$27,470.21 judgment entered against Respondent on or about April 8, 1999.

2. On or about May 12, 1999, Respondent filed a claim of exemption with the Sheriff's department, executed under penalty of perjury, stating that the bank account levied against should be exempt because it contained attorney client trust funds. With that claim, Respondent filed a declaration, executed under penalty of perjury, with supporting documentation showing that on April 28, 1999, he deposited into the business account \$5,200 from client Gloria Root to be held in trust. The declaration also stated that he had previously deposited \$500 from client Lani O'Grady for filing her lawsuit as well as \$250 from client David Forest for costs. The portion of the monies which represented costs should have been deposited in a client trust account.

3. Respondent's business account was never an attorney-client trust account.

Legal Conclusion:

By failing to deposit and maintain funds for clients' costs in a client trust account, Respondent failed to deposit funds received or held for the benefit of a client in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import in wilful violation of Rules of Professional Conduct, rule 4-100(A).

COUNT FOUR

4. In or about 1998, Respondent was employed to represent Michael Pattinson in a civil action filed on or about May 21, 1998, in U.S. District Court, Central District of California, case no. 98-3985 CAS (Shx), entitled Michael Philip Pattinson v. Church of Scientology International, et al. (the "Pattinson matter").

5. On or about April 15, 1999, the court issued an order that the defendant Kendrick Moxon ("Moxon") was entitled to costs, expenses and attorneys' fees because Respondent had asserted claims in bad faith and resulted in an unnecessary multiplication of the proceedings. The initial and three amended complaints, filed on or about October 28, 1998, November 4, 1998, and February 9, 1999, each failed to state facts supporting a basis for liability against Moxon resulting in a finding of the court that Respondent acted in bad faith. The court found that Respondent had violated 28 U.S.C. section 1927 prohibiting the unreasonable and vexatious multiplication of proceedings as well as Federal Rules of Civil Procedure, rule 11 requiring attorneys to certify that the paper filed had a legal basis.

6. On or about July 15, 1999, the court issued an order sanctioning Respondent \$28,484.72. The same day, the clerk of the court served Respondent with a copy of the order by mail to Respondent's address.

7. To date, Respondent has failed to comply with the court order.

Legal Conclusion:

By failing to pay costs, expenses and attorney's fees as ordered, Respondent has wilfully disobeyed or violated an order of the court requiring him to do an act connected with or in the course of Respondent's profession which he ought in good faith to do in wilful violation of Business and Professions Code, section 6103.

COUNT FIVE

8. In or about 1999, Respondent was employed by bankruptcy Trustee David Ray to represent the bankruptcy estate in an adversary action filed in or about February 1999, in U.S. Bankruptcy Court, Central District of California, entitled David L. Ray v. Rodney Nardi, et al., adv. no. AD 98-02863-LF (the "Ray matter"). The

original bankruptcy proceeding was entitled In re John Michael Kaleel, case no. LA 97-41835-LF.

9. On or about June 18, 1999, the defendants in the Ray matter filed and properly served a motion against Respondent for sanctions alleging, among other items, that Respondent had a conflict of interest and had failed to disclose that conflict. Respondent was concurrently representing the following: (a) John Michael Kaleel's parents and siblings (who were listed as secured creditors in Kaleel's bankruptcy) in an action in state court, Los Angeles Superior Court case no. BC189461, against Nardi and other defendants in the Ray matter, as well as (b) the bankruptcy estate, against which Nardi and other defendants in the Ray matter had claims pending.

10. On or about June 16, 1999, the court filed an order finding that Respondent had substantial and clear conflicts of interest.

11. On or about July 21, 1999, the court ordered that Respondent pay \$8,000 in sanctions. On or about July 22, 1999, the clerk of the court served Respondent with a copy of the order by mail to Respondent's address.

12. To date, Respondent has failed to comply with the court order.

Legal Conclusion:

By failing to pay the sanction as ordered, Respondent has wilfully disobeyed or violated an order of the court requiring him to do an act connected with or in the course of Respondent's profession which he ought in good faith to do in wilful violation of Business and Professions Code, section 6103.

COUNT SIX

13. The allegations of paragraphs 8 through 12 are incorporated by reference.

14. Respondent failed to warn Nardi and the other defendants of any potential or actual conflict between them and the Kaleel family members.

15. Respondent represented the Kaleel bankruptcy estate without obtaining the informed written consent of Nardi and the other defendants to any potential or actual conflict of interest.

Legal Conclusion:

By representing the bankruptcy estate against Nardi and other defendants when Nardi and the other defendants were all claimants to the bankruptcy estate, and when Respondent had previously sued Nardi and the other defendants on behalf of the Kaleel parents and siblings (also claimants to the bankruptcy estate), Respondent represented more than one client in a matter in which the interest of the clients actually conflicted in wilful violation of Rules of Professional Conduct,

rule 3-310(C)(2).

COUNT SEVEN

16. In or about 1999, Respondent was employed to represent Robert Jeavons in a civil action filed in or about July 1999, in Los Angeles Superior Court, case no. BC207363, entitled Robert Jeavons v. Church of Scientology International, et al. (the "Jeavons matter").

17. In or about August 1998, the defendants filed and properly served on Respondent a motion to strike the complaint pursuant to California Code of Civil Procedure section 425.16 (colloquially known as the "anti-SLAPP" statute, Strategic Lawsuit Against Public Participation) which was enacted to address lawsuits brought primarily to chill the constitutional right of freedom of speech.

18. On or about September 10, 1999, with Respondent present in court, the court issued an order that the defendants' counsel was entitled to costs of \$23 and attorneys' fees of \$3,000. The court ruled that the complaint filed and served by Respondent lacked merit and dismissed it with prejudice. On or about that same day, the clerk of the court mailed a copy of the minute order to Respondent's address. On or about September 13, 1999, defendants' counsel properly served a copy of the order on Respondent.

19. To date, Respondent has failed to comply with the court order.

Legal Conclusion:

By failing to pay costs, expenses and attorney's fees as ordered, Respondent has wilfully disobeyed or violated an order of the court requiring him to do an act connected with or in the course of Respondent's profession which he ought in good faith to do in wilful violation of Business and Professions Code, section 6103.

COUNT EIGHT

20. In or about 1999, Respondent was employed to represent Michael Pattinson in a civil action filed on or about March 19, 1999, in Los Angeles Superior Court, case no. BC 207364, entitled Michael Philip Pattinson v. Miscavige, et al. (the "second Pattinson matter").

21. On or about July 20, 1999, defendant Church of Spiritual Technology ("CST") filed and properly served Respondent with a motion to strike the complaint pursuant to California Code of Civil Procedure, section 425.16 (the "anti-SLAPP" statute). On or about October 7, 1999, the court filed an order granting the motion finding that every cause of action arose from alleged acts taken in furtherance of the defendant's constitutional free speech rights.

22. On or about October 25, 1999, CST filed and properly served on

Respondent a motion for fees and costs. On or about November 8, 1999, Respondent filed an opposition to that motion.

23. On or about November 16, 1999, the court issued an order sanctioning Respondent \$12,500. Respondent was in the courtroom and waived notice.

24. To date, Respondent has failed to comply with the court order.

Legal Conclusion:

By failing to pay costs, expenses and attorney's fees as ordered, Respondent has wilfully disobeyed or violated an order of the court requiring him to do an act connected with or in the course of Respondent's profession which he ought in good faith to do in wilful violation of Business and Professions Code, section 6103.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was October 23, 2001.

DISMISSALS.

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
99-O-12791	TWO	Business & Professions Code, section 6106
99-O-12791	THREE	Business & Professions Code, section 6106
99-O-12791	NINE	Business & Professions Code, section 6103
99-O-12791	TEN	Business & Professions Code, section 6068(c)

OTHER CIRCUMSTANCES.

In relation to Count 1, Respondent contends that \$5,000 of the monies received from Gloria Root were for advanced fees. As such, that amount did not need to be deposited in trust.

Respondent has been admitted to practice law in New York; New South Wales, Australia; New Zealand; and as an "overseas" lawyer in London, England. He has been a member of the State Bar of California since 1987 and has no prior discipline.

Respondent contends that he has acted in good faith by being available to provide representation against the Church of Scientology since 1991. For example, at least one court has scrutinized the Church of Scientology's litigation tactics to determine whether "... the litigation process [was used] to bludgeon the opponent into submission." See Church of Scientology v. Wollersheim (1996) 42 Cal.App.4th 628, 649. Another court has found that Scientology had a "Fair Game Policies and Practices" which permitted that anyone impeding the Church of Scientology could be "... tricked, sued, or lied to or destroyed." Church of Scientology v. Armstrong (1991) 232 Cal.App.3d 1060, 1067. In May 1998, Church of Scientology attorneys and employees testified in Berry v. Cipriano, LASC Case No. BC 184355 that an investigator was hired to investigate Respondent. Additionally, in March 1998 leaflets were disseminated to Respondent's neighbors apparently by Church of Scientology members. As a result, Respondent contends that he lost many friends and acquaintances.

Respondent contends that no clients were harmed. Respondent has cooperated with the State Bar of California in the investigation of these matters.

In or about mid-1998, Respondent began treatment with a specialist for depression and began taking an anti-depressant. In April 1999, Respondent began attending Alcoholics Anonymous meetings and contends he has maintained sobriety since that time. As a result of his medical condition, Respondent contends he closed down his practice at the end of 1999.

In the 1970s, Respondent was one of the early directors of New Zealand's Environmental Defense Fund which created national parkland from scenic private lands. In 1982, Respondent was one of the three founders of what is now the American Foundation for AIDS Research (AMFar). In 1994, Respondent provided pro bono representation to the Standing Committee on Discipline for the U.S. Central District Court and successfully prosecuted civil rights attorney Stephen Yagman for impugning the integrity of a sitting federal judge. In the past five years, Respondent has provided approximately 400 hours of pro bono representation to approximately 12 clients in relation to various types of matters including civil litigation, minor criminal, traffic violation, and traffic accident matters.

Respondent is currently unemployed and on general relief. Respondent filed for Chapter 7 bankruptcy protection on June 11, 1999. On August 16, 2001 effective September 13, 1999, Respondent was discharged from his no asset bankruptcy. In 1999, the Church of Scientology placed a lien on Respondent's condominium in relation to a judgment they obtained in the Barton matter. Respondent contends that he had between \$50,000 and \$70,000 in equity in the condominium and that

because the Church of Scientology refused to remove its lien, a favorable pre-foreclosure sale fell out of escrow on approximately November 28, 2000. Respondent contends that if such sale had gone through, the money could have satisfied the Barton and IRS liens, outstanding homeowners' association dues, as well as the sanctions orders against him. Within the past year, the Church of Scientology seized Respondent's Jeep. Respondent contends that attorneys for the Church of Scientology represented to the Los Angeles Superior Court, Department 1A in Jeavons v. Church of Scientology International, LASC case no. 207363, on February 15, 2001 that the Jeep was worth \$6,050, but sold it for \$950, and then retained the proceeds in violation of the statutory exemption of \$1,900. See California Code of Civil Procedure section 704.010(a)(1). As a result of all of these circumstances, Respondent contends that it is impossible for him to pay the sanctions ordered against him.

FINANCIAL CONDITIONS, RESTITUTION.

Beginning from the effective date of discipline in this matter and ending upon the effective date of termination of discipline in this matter, respondent must make partial restitution to Kendrick L. Moxon or Bradley E. Brook or William T. Drescher or the Client Security Fund if it has paid, in the amount of \$10 each month and furnish satisfactory evidence of such restitution to the Probation Unit. Respondent shall include in each quarterly report required herein satisfactory evidence of all restitution payments made by him during that reporting period. This condition does not require Respondent to make full restitution because the amount of the sanctions awarded against Respondent is over \$42,000, and Respondent is currently without employment and bankrupt. This restitution condition in no way limits the parties who obtained the sanctions orders from attempting to collect on those orders.

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October 25, 2001
Date

Graham Edward Berry
Respondent's signature

Graham Edward Berry
print name

October 25, 2001
Date

Terrie Goldade
Counsel's signature
Deputy Trial

Terrie Goldade
print name

10/25/01
Date

[Signature]
Deputy Trial Counsel's signature

Austin Hernandez
print name

ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- ☒ The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 953(a), California Rules of Court.)

10/26/01
Date

[Signature]
Judge of the State Bar Court

Defendant and Cross-Complainant *pro se*

1 **TO THE PLAINTIFF AND CROSS-DEFENDANT KENDRICK L. MOXON**

2 **PLEASE TAKE NOTICE** that defendant and cross-complainant, Graham E. Berry, will
3 take the deposition of plaintiff and cross-defendant Kendrick L. Moxon, pursuant to Code of Civil
4 Procedure section 2025.010, *et. seq.* The deposition will take place on February 25, 2010, at 10:00
5 a.m., at Esquire Deposition Services, 523 West 6th Street, Los Angeles, CA 90014-1217 before a
6 Notary Public authorized to administer oaths by the laws of the State of California.

7 **PLEASE TAKE FURTHER NOTICE** that defendant and cross-complainant reserves the
8 right to have this deposition video-taped for use at trial in lieu of live testimony pursuant to Code
9 of Civil Procedure section 2025.340, *et. seq.*

10 **PLEASE TAKE FURTHER NOTICE** that said deposition will be continued from day to
11 day until completed (Saturdays and Sundays excluded).

12 **PLEASE TAKE FURTHER NOTICE** that plaintiff and cross-defendant is requested to
13 bring the following documents to the deposition:

14 **INSTRUCTIONS**

15 The term “**DOCUMENTS**” refers to any writing, paper, or recording of every kind and
16 nature, including hard-copy records, electronically stored records, audio and visual recordings,
17 emails, and magnetically stored information within **YOUR** possession, custody, or control. The
18 term “**YOU**” or “**YOUR**” refers to plaintiff and cross-defendant and any agent acting under
19 plaintiff and cross-defendant’s control.

20 If plaintiff and cross-defendant withholds any document (s), for any reason (s), from being
21 produced at the deposition as requested herein, then the plaintiff and cross-defendant will also
22 bring to the deposition a privilege log that properly identifies and adequately describes the
23 document (s) being withheld and the legal basis upon which they are being withheld.

24 The plaintiff and cross-defendant shall produce original copies of all **DOCUMENTS**
25 requested along with all markings of any nature thereon.

26 The scope of this document demand commences January 1, 1990.
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DOCUMENTS TO BE PRODUCED

1. All **DOCUMENTS** reflecting communications **YOU** have had with any person, through any media or form, regarding defendant and cross-complainant.
2. All **DOCUMENTS** reflecting communications any of **YOUR** partners, employees, agents, clients, associates or others have had with any person or entity, including but not limited to any business entity, professional entity, government agency, law enforcement agency, prosecutorial agency, State Bar representative, judicial officer, media entity or media reporter, relating and/or referring to the defendant and cross-complainant.
3. All **DOCUMENTS** relating and/or referring to the defendant and cross-complainant and either maintained by **YOU** or **YOUR** agents or provided by **YOU**, **YOUR** private investigators, agents, clients or any others acting on behalf of either **YOU** or **YOUR** clients to any person including but not limited to any business entity, professional entity, government agency, law enforcement agency, prosecutorial agency, State Bar, judicial officer, media entity or media reporter.
4. All **DOCUMENTS** constituting the transcript of hearing on any matter or motion in connection with the cases claimed by defendant and cross-complainant to be related to or otherwise connected with the litigation in *Berry v. Cipriano/Barton/Miscavige/Moxon/Ingram, et al.*, *Pattinson v. Church of Scientology*, *Reveillere v. Pattinson*, *In Re Michael Pattinson Bankruptcy Proceedings*, *In Re Graham E. Berry Bankruptcy Proceedings*, *State Bar v. Berry*, *Hurtado v. Berry* and *McPherson v. Church of Scientology (Ken Dandar Disqualification hearing, Jeavons v. CSI, and in "the Hoden v. Henson cases."*
5. All **DOCUMENTS** filed in any of the following matters containing any statement (s) that any of the following matters are related or for any purposes should be considered as being similar: *Berry v. Cipriano/Barton/Miscavige/Moxon/Ingram, et al.*, *Pattinson v. Church of Scientology*, *Reveillere v. Pattinson*, *In Re Michael Pattinson Bankruptcy Proceedings*, *In Re Graham E. Berry Bankruptcy Proceedings*, *State Bar v. Berry*, *Hurtado v. Berry* and *McPherson v.*

- 1 *Church of Scientology (Ken Dandar Disqualification hearing, Jeavons v. CSI, and in “the*
2 *Hoden v. Henson cases.”*
- 3 6. All **DOCUMENTS**, including all banking records, indicating the amount, date, purpose,
4 origin, source and/or beneficiary of the funds **YOU** used to make payments to or for the
5 benefit of any of the defendants, witnesses or potential witnesses in any of the following
6 matters:
- 7 *Berry v. Cipriano/Barton/Miscavige/Moxon/Ingram ,et al., Pattinson v. Church of Scientology,*
8 *Reveillere v. Pattinson, In Re Michael Pattinson Bankruptcy Proceedings, In Re Graham E.*
9 *Berry Bankruptcy Proceedings, State Bar v. Berry, Hurtado v. Berry and McPherson v.*
10 *Church of Scientology (Ken Dandar Disqualification hearing, Jeavons v. CSI, and in “the*
11 *Hoden v. Henson cases.”*
- 12 7. All **DOCUMENTS**, including all banking records, indicating the amount, date, target,
13 purpose, origin, source and/or beneficiary of the funds **YOU** used to make payments to or for
14 the benefit of any private investigator to investigate or conduct any manner of surveillance of
15 the defendant and cross-complainant herein, or of any and all parties, witnesses or potential
16 witnesses in any of the following matters:
- 17 *Berry v. Cipriano/Barton/Miscavige/Moxon/Ingram ,et al., Pattinson v. Church of Scientology,*
18 *Reveillere v. Pattinson, In Re Michael Pattinson Bankruptcy Proceedings, In Re Graham E.*
19 *Berry Bankruptcy Proceedings, State Bar v. Berry, Hurtado v. Berry and McPherson v.*
20 *Church of Scientology (Ken Dandar Disqualification hearing, Jeavons v. CSI, and in “the*
21 *Hoden v. Henson cases.”*
- 22 8. All **DOCUMENTS**, including all banking records, indicating the amount, date, purpose,
23 origin, source and/or beneficiary of the funds **YOU** or **YOUR** agents used to make payments
24 to or for the benefit of any person connected with any judicial officer in the matters of *Berry v.*
25 *Cipriano/Barton/Miscavige/Moxon/Ingram ,et al., Pattinson v. Church of Scientology,*
26 *Reveillere v. Pattinson, In Re Michael Pattinson Bankruptcy Proceedings, In Re Graham E.*
27 *Berry Bankruptcy Proceedings, State Bar v. Berry, Hurtado v. Berry and McPherson v.*
28

1 *Church of Scientology (Ken Dandar Disqualification hearing, Jeavons v. CSI, and in “the*
2 *Hoden v. Henson cases.”*

3 9. All **DOCUMENTS** recording or reflecting any communication with, or to be had with, any
4 judicial officer or person connected with any judicial officer (including but not limited to law
5 clerks, wives, fiancées and friends), or retired judicial officer, in the matters of *Berry v.*
6 *Cipriano/Barton/Miscavige/Moxon/Ingram ,et al., Pattinson v. Church of Scientology,*
7 *Reveillere v. Pattinson, In Re Michael Pattinson Bankruptcy Proceedings, In Re Graham E.*
8 *Berry Bankruptcy Proceedings, State Bar v. Berry, Hurtado v. Berry and McPherson v.*
9 *Church of Scientology (Ken Dandar Disqualification hearing, Jeavons v. CSI, and in “the*
10 *Hoden v. Henson cases.”*

11 10. All **DOCUMENTS** recording or reflecting any communication with, or to be had with, any
12 employee of any bar associations anywhere concerning the defendant and cross-complainant
13 herein including but not limited to the California and New York State Bars, the New Zealand
14 and New South Wales Societies of Solicitors.

15 11. All **DOCUMENTS** recording or reflecting any communication with, or to be had with, any
16 employee of any federal or state court anywhere concerning the defendant and cross-
17 complainant herein.

18 12. All **DOCUMENTS** recording or reflecting any communication with, or to be had with, any of
19 your co-counsel in the matters of *Berry v. Cipriano/Barton/Miscavige/Moxon/Ingram ,et al.,*
20 *Berry v. Cipriano Code Civ. Proc. §391 proceeding, Pattinson v. Church of Scientology,*
21 *Reveillere v. Pattinson, In Re Michael Pattinson Bankruptcy proceedings, In Re Graham E.*
22 *Berry Bankruptcy proceedings, State Bar v. Berry, Hurtado v. Berry and McPherson v.*
23 *Church of Scientology (Ken Dandar Disqualification hearing, Jeavons v. CSI, and in “the*
24 *Hoden v. Henson cases.”*

25 13. All **DOCUMENTS** recording or reflecting any communication with, or to be had with, Robert
26 Cipriano, Dr. Mathilde Krim, Bernard Le Geros and Wilbur J. Long.

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- 1 14. All **DOCUMENTS** recording or reflecting any communication with, or to be had with, any
2 representative of a local, county, state, federal or foreign government concerning the defendant
3 and cross-complainant herein.
- 4 15. All **DOCUMENTS** describing, recording or reflecting **YOUR** weekly statistics or "stats" in
5 connection with any cycle of action or other activity in connection with the defendant and
6 cross-complainant herein and the specific activity that weekly statistic reflected and/or
7 recorded.
- 8 16. All **DOCUMENTS** describing, recording or reflecting any communication with any party,
9 witness or potential witness in the underlying proceedings.
- 10 17. All **DOCUMENTS**, billing statements, requests for payment or funds, submitted within
11 YOUR office or to any of YOUR clients in connection with any payments made in connection
12 with any expense incurred or payment made concerning the All **DOCUMENTS** constituting
13 the transcript of hearing on any matter or motion in connection with the cases claimed by
14 defendant and cross-complainant to be related to or otherwise connected with the litigation in
15 *Berry v. Cipriano/Barton/Miscavige/Moxon/Ingram ,et al., Pattinson v. Church of Scientology,*
16 *Reveillere v. Pattinson, In Re Michael Pattinson Bankruptcy Proceedings, In Re Graham E.*
17 *Berry Bankruptcy Proceedings, State Bar v. Berry, Hurtado v. Berry and McPherson v.*
18 *Church of Scientology (Ken Dandar Disqualification hearing, Jeavons v. CSI, and in "the*
19 *Hoden v. Henson cases."*
20
21
- 22 18. All **DOCUMENTS** describing, recording or reflecting any communication with J. Stephen
23 Lewis or Christian J. Scali after November 1, 1998.
- 24 19. All **DOCUMENTS** constituting the transcript of hearing on any matter or motion in
25 connection with the cases claimed by defendant and cross-complainant to be related to or
26 otherwise connected with the litigation in *Berry v. Cipriano/Barton/Miscavige/Moxon/Ingram*
27 *,et al., Pattinson v. Church of Scientology, Reveillere v. Pattinson, In Re Michael Pattinson*
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Bankruptcy Proceedings, In Re Graham E. Berry Bankruptcy Proceedings, State Bar v. Berry, Hurtado v. Berry and McPherson v. Church of Scientology (Ken Dandar Disqualification hearing, Jeavons v. CSI, and in "the Hoden v. Henson cases."

Respectfully submitted,

DATED: February 14, 2010

GRAHAM E. BERRY

Defendant and Cross-complainant *pro se*

1 PROOF OF SERVICE BY MAIL

2
3 STATE OF CALIFORNIA)
4 COUNTY OF LOS ANGELES) ss.:

5 I am employed in the County of Los Angeles, State of California. I am over the age of 18
6 and I am not a party to the within action. My business address is 3384 McLaughlin Avenue, Los Angeles, CA 90066

7 On February 14, 2010, I served on interested parties in said action the within:

8 **NOTICE OF TAKING DEPOSITION OF PLAINTIFF AND CROSS-DEFENDANT AND**
9 **PRODUCTION OF DOCUMENTS THEREAT**

10 By email transmission to *kmoxon @ earthlink.net* at ____ p.m. and by fax transmission to fax
11 number (213) 487-5385 at ____ p.m. and
12 by placing a true copy thereof in sealed envelope(s) addressed as stated below.

13 Kendrick L. Moxon, Esq,
14 Moxon & Kobrin
15 3055 Wilshire Boulevard, Suite 900
16 Los Angeles, CA 90010

17 Telephone: (213) 487-4468
18 Facsimile: (213) 487-5385
19 Email: *kmoxon@earthlink.net*

20 I am readily familiar with this firm's practice of collection and processing correspondence
21 for mailing. Under that practice it would be deposited with the U.S. postal service on that same
22 day with postage thereon fully prepaid at Riverside, California, in the ordinary course of business.
23 I am aware that on motion of party served, service is presumed invalid if postal cancellation date
24 or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

25 Executed on February 14, 2010, at Los Angeles, California.

26 I declare under penalty of perjury under the laws of the State of California that the
27 foregoing is true and correct.

28

Graham E. Berry
(Type or print name)

(Signature)

1 PROOF OF SERVICE

2 I am employed in Los Angeles County, California, at Moxon & Kobrin, 3055
3 Wilshire Blvd., Ste. 900, Los Angeles, CA, 90010.

4 On February 22, 2010, I served by First Class Mail, postage prepaid the
5 following document:

6 **OPPOSITION TO VEXATIOUS LITIGANT'S REQUEST TO FILE**
7 **NEW LITIGATION;**

8 **REQUEST FOR FINDING OF CONTEMPT AGAINST GRAHAM BERRY;**

9 **NOTICE OF FILING OF IDENTIFICATION OF VEXATIOUS LITIGANT**
10 **PURSUANT TO C.C.P. §391.7(C) AND AUTOMATIC STAY**

11 on the following person:

12 Graham Berry
13 3384 McLaughlin Ave.
14 Los Angeles, CA 90066

15 Executed on February 22, 2010, in Los Angeles, California. I declare under the
16 penalty of perjury under the laws of the State of California that the foregoing is true
17 and correct.

18 
19 Ava Paquette
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